



(916) 445-3076

October 22, 1979

Mr. Ernest L. Comalli  
Sonoma County Assessor  
2555 Mendocino Ave.  
Santa Rosa, CA 95401

Attention: Mr. Steve Olsen  
Chief, Assessment Standards Div.

Dear Mr. Olsen:

You recently requested our opinion on the question whether a property owner who has timely filed an application for reduced assessment for the 1978-79 year may continue to pursue his appeal after the county has refunded the taxes. The reason for pursuing the appeal is to recover taxes paid in excess of one percent bonded indebtedness approved by the voters prior to July 1978 and to recover interest on the refunds. Our conclusion is that such an appeal may not be maintained.

The question whether the taxes in excess of one percent may be obtained and whether interest may be recovered is a matter of law, and is outside of the jurisdiction of the appeals board. The proper way to pursue such a claim is to file a claim for refund under Section 5096. However, for the reasons stated below, it is our opinion that the courts would hold against the taxpayer on this issue.

As to the refund in excess of one percent, this is specifically prohibited by SB 17, Chapter 49 of the Statutes of 1979, Section 2(b). Although the Legislature has historically authorized total refunds, they have not done so in this case. Refunds are creations of statutes and the Legislature has the power to limit them when it deems necessary. Thus, the specific provisions of Section 2(b) of SB 17 override the general legislative plan for refunds.

The issue of interest was recently the subject of a court case. In Ball v. County of Los Angeles, (1978) 82 Cal. App. 3d 312, the appellate court held that interest must be authorized by statute to be received by a taxpayer. Sections 5150 and 5151 of the Revenue and Taxation Code authorize

*Equalization*

interest may be claimed only when recovery of taxes is authorized by a court, or refunded after a value reduction by an assessment appeals board. The reduction here was pursuant to neither action. Even if pursued the appeals board could not reduce anything because the reduction has already been made. Further, in Ball the court held that these sections reveal a comprehensive legislative plan which authorizes recovery of interest only where the county, with notice of an improper assessment, has failed to grant a tax refund. The court held that a taxpayer is not entitled to interest when erroneously collected funds are promptly refunded upon being put on notice of its error. This is exactly what happened in the situation you describe.

Very truly yours,

Robert D. Milam  
Tax Counsel

RDM:fr